

ORDINANCE NO. _____

1 AN ORDINANCE amending Chapter 8.32 of the Lincoln Municipal Code
2 relating to solid wastes by amending Section 8.32.010 to amend the definition of "refuse" to
3 include building rubbish and demolition debris and to add a definition of "refuse hauler";
4 amending Section 8.32.060 to delete the reference to "construction rubble" and to insert in
5 lieu thereof references to "building rubbish" and "demolition debris"; amending Section
6 8.32.100 to limit the use to which landfill fees may be devoted; amending Section 8.32.110
7 relating to refuse haulers to provide exceptions to the licensing requirement; amending Section
8 8.32.150 relating to occupation taxes by eliminating the annual occupation tax of \$100 and
9 providing for an occupation tax of \$7.00 per ton on all refuse collected within the corporate
10 limits of the city or any other refuse deposited at the public sanitary landfills, requiring
11 quarterly reports on tonnage collected, directing that all refuse vehicles be weighed at the
12 public sanitary landfill at 56th Street and Bluff Road or at such other scales approved by the
13 Director of Public Works and Utilities; repealing Section 8.32.170 regarding revocation of and
14 suspension of licenses; amending Section 8.32.330 to eliminate appeal provisions and pro-
15 vide for immediate suspension of limited landfill permits when health hazards exist;
16 amending Section 8.32.340 to revise the appeal procedure for persons aggrieved by the
17 suspension, revocation, or denial of a license or permit under Chapter 8.32; repealing Section
18 8.32.350 regarding the appeal procedure; and repealing Sections 8.32.010, 8.32.060,
19 8.32.100, 8.32.110, 8.32.150 8.32.330, and 8.32.340 of the Lincoln Municipal Code as
20 hitherto existing; and providing an operative date of June 1, 2003.

21 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

Section 1. That Section 8.32.010 of the Lincoln Municipal Code be amended
to read as follows:

8.32.010 Definitions.

For the purposes of this chapter, the following words shall have the following meanings:

Bottom ash shall mean all residue that falls from the burn chamber of a device used for incineration or to burn combustible or flammable material for heat, steam, or electricity.

Building rubbish shall mean all discarded or unwanted material or waste material from the construction, remodeling, and repair operations on houses, commercial buildings, and other structures including, but not limited to, excavated earth, stones, brick, plaster, lumber, concrete, and waste parts occasioned by installations and repairs, but excluding garbage, asbestos products, asphaltic products and other hazardous wastes or hazardous materials as defined in this and other chapters of the Lincoln Municipal Code.

Commercial waste shall mean waste produced by retail and wholesale businesses, services, entertainment establishments, and by hotels and restaurants.

Demolition debris shall mean all combustible and noncombustible waste material resulting from the demolition of structures, roadways, or other paved surfaces, but excluding garbage, asbestos products, asphaltic products and other hazardous wastes or hazardous materials as defined in this and other chapters of the Lincoln Municipal Code.

Fly ash shall mean all residue derived from incineration or burning of combustible or flammable material for heat, steam, or electricity, with the exception of bottom ash.

Garbage shall mean all animal, fruit, or vegetable wastes resulting from the handling, preparation, cooking, or consumption of food.

Hazardous waste shall mean all waste material which is ignitable, corrosive, chemically reactive, radioactive, or toxic, as defined by Federal RCRA Regulations, Federal

1 Register Volume 45, No. 98, May 19, 1980 and subsequent revisions and/or NDEQ
2 regulations.

3 **Health Director** shall mean the Director of the Lincoln-Lancaster County Health
4 Department or duly authorized representatives of the director.

5 **Industrial waste** shall mean waste from factories, processing plants, and other
6 manufacturing enterprises.

7 **Infectious waste** shall mean wastes from hospitals, medical clinics, offices of
8 physicians, doctors, surgeons, dentists, veterinarians, pathological laboratories, research and
9 development laboratories, dispensaries, blood plasma centers, and other like facilities which
10 contain any of the following:

11 (1) Blood and body fluids that include fluid blood, blood products, and body
12 fluids. (This shall not include dried blood or dried body fluids.) Blood and blood products
13 shall include human serum, human plasma, and other human blood components. The term
14 body fluid includes semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid,
15 peritoneal fluid, pericardial fluid, amniotic fluid and any other body fluid visibly contaminated
16 with blood;

17 (2) Infectious sharp waste, which shall include: all discarded items derived
18 from (i) human patient diagnosis, care, or treatment, or (ii) animals infected with zoonotic
19 disease, which could potentially transmit disease via direct subdermal (beneath the skin)
20 inoculation, including hypodermic needles, scalpels, and breakable containers containing
21 materials defined herein as infectious;

22 (3) Laboratory wastes, which shall include: all cultures and stocks of
23 infectious agents, including specimen cultures from medical and pathological laboratories,
24 cultures and stocks from research and industrial laboratories, wastes from the production of

1 biologicals, discarded live and attenuated vaccines, and culture dishes and devices used to
2 transfer, inoculate and mix culture;

3 (4) Animal waste, which shall include: all such waste derived from animals
4 afflicted with zoonotic disease or purposely infected with agents communicable to humans,
5 including blood and body fluids, carcasses, body parts, excrement, and bedding of such
6 animals;

7 (5) Other waste, which shall include wastes that contain pathogenic
8 microbial agents or other biologically active materials in sufficient concentrations that
9 exposure to the waste directly or indirectly creates a significant risk of disease.

10 **Lawn waste** shall mean grass cuttings or clippings and leaves.

11 **Limited landfill** shall mean a type of operation approved by the Health Director in
12 which only building rubbish and demolition debris are disposed of by plan on a specified par-
13 cel of land and operated and maintained in such a manner as to present no danger to the
14 health and safety and welfare of human beings.

15 **NDEQ** shall mean the Nebraska Department of Environmental Quality.

16 **Person** shall mean and include any individual, firm, corporation, association, or
17 partnership, institution, or entity, whether public or private.

18 **RCRA** shall mean the Resource Conservation and Recovery Act of 1976, 42 U.S.C.,
19 Paragraph 6901, et seq., as amended.

20 **Refuse** shall mean and include garbage, building rubbish, and demolition debris as
21 hereinbefore defined, and all sweepings, ashes, paper, cardboard, feathers, rags, glass, dishes,
22 bottles, crockery, pans, utensils of every kind and nature, pasteboard boxes, food containers,
23 tin cans, and any other waste matter or material not herein designated as garbage which
24 accumulates in the conduct of a household, business establishment, shop, or factory of any
25 kind or nature. For purposes of this chapter, the term refuse shall not include waste for which

1 an RCRA permit has been issued or recyclables, as defined in Section 5.41.010 of this code,
2 that have been separated out at the source.

3 **Refuse hauler** shall mean any person engaged in the business of collecting, hauling,
4 or conveying refuse as defined in this section or who, as part of the duties of such person's
5 occupation, collects, hauls, or conveys refuse as defined in this section.

6 **Refuse vehicle** shall mean any vehicle with or without a packing unit or mechanism
7 used to collect, haul, or convey refuse. This shall include vehicles used to transport roll-off
8 containers as defined in Section 8.32.220.

9 **Sanitary landfill** shall mean a type of operation licensed or approved by the State of
10 Nebraska in which solid waste is deposited by plan on a specified portion of land, is compact-
11 ed by force applied by mechanical equipment, and then is covered by compacted suitable
12 covering material to a depth of at least six to twelve inches over individual cells of solid waste
13 materials, which are closed at the end of each day, and to a depth of at least twenty-four
14 inches over the finished landfill.

15 **Site** shall mean the contiguous land area where any regulated or related activity is
16 physically located or conducted. Properties that are separated only by a street, alley, or other
17 public right-of-way shall be considered contiguous.

18 **Solid waste** shall mean all putrescible and nonputrescible wastes whether in solid or
19 liquid form and includes garbage, scavenger matter, rubbish, ashes, refuse, fill dirt, sewage
20 sludge, street refuse, commercial and industrial wastes, demolition debris and all used con-
21 struction material, building rubbish, discarded automobile and other types of vehicle body
22 parts or portions thereof, machinery or parts thereof, discarded home or industrial appliances,
23 iron, steel and other old or metal scrap material, manure, human excrement, vegetable or
24 animal solids and semi-solid waste, infectious waste, special waste, lawn waste, tree limbs,

branches, shrubbery, bushes, and other similar organic waste, including garden vegetative material, dead animals or parts thereof, and other discarded solid materials.

Section 2. That Section 8.32.060 of the Lincoln Municipal Code be amended to read as follows:

8.32.060 Public Sanitary Landfills.

Public sanitary landfills shall be under the supervision of the Director of Public Works and Utilities. Said landfills shall be kept open for dumping and disposal purposes as follows:

(1) 48th Street site:

(a) From 6:45 a.m. to 3:00 p.m., Monday through Saturday; provided, however, that contractors disposing of ~~construction rubble~~ building rubbish or demolition debris will be granted access to the site until 6:00 p.m. during daylight savings time;

(b) From 6:45 a.m. to 12:00 noon on Sunday;

(c) The 48th Street sanitary landfill site will be closed on Thanksgiving Day, Christmas Day, New Year's Day, Memorial Day, Labor Day, and July 4.

(2) 56th Street and Bluff Road site:

(a) From 6:45 a.m. to 4:15 p.m., Monday through Friday;

(b) From 6:45 a.m. to 1:00 p.m. on Saturday;

(c) From 9:00 a.m. to 12:30 p.m. on Sunday;

(d) The 56th Street and Bluff Road site will be closed on Thanksgiving Day, Christmas Day, and New Year's Day.

Section 3. That Section 8.32.100 of the Lincoln Municipal Code be amended to read as follows:

8.32.100 Public Sanitary Landfill; Fee for Use.

The City Council may from time to time establish or revise, by resolution, fees to be charged to any person for the privilege of using any public sanitary landfill or other waste

1 disposal facility owned by the City of Lincoln. Such fees, when so established or revised, shall
2 be collected by the Director of Public Works and Utilities and shall be set aside in the Sanitary
3 Landfill Revenue Fund which is hereby created. The fees collected and other revenue from
4 operations of the sanitary landfill shall be used exclusively for the purpose of operating,
5 expanding, and improving existing public sanitary landfills or solid waste disposal facilities,
6 including reclamation of such landfill or facilities for other purposes and for the purpose of
7 paying the costs of any purchase, construction, lease, or condemnation of property, including
8 the costs of any bonded indebtedness/ and the equipping, developing and operation of such
9 property for use as a public sanitary landfill or solid waste disposal facility, ~~and related solid~~
10 ~~waste management activities including, but not limited to, resource recovery, recycling,~~
11 ~~household hazardous waste collection and disposal, and programs to educate the public~~
12 ~~regarding the alternatives to the traditional methods of solid waste disposal.~~

13 Section 4. That Section 8.32.110 of the Lincoln Municipal Code be amended
14 to read as follows:

15 **8.32.110 Refuse Haulers; License Required.**

16 It shall be unlawful for any person to collect, haul, or convey refuse from property ~~other~~
17 ~~than their own residence to the City of Lincoln sanitary landfill or within the corporate limits~~
18 of the city or within three miles thereof without first having procured a license ~~so~~ to do so as
19 ~~hereinafter provided~~ under the provisions of this chapter; provided, however, no license shall
20 be required;

21 (a) For a homeowner conveying refuse from his or her own residence to the public
22 sanitary landfills; or

23 (b) For collecting, hauling, or conveying building rubbish or demolition debris that
24 is destined for and that may lawfully be deposited in a limited landfill or the 48th Street public
25 sanitary landfill.

1 Section 5. That Section 8.32.150 of the Lincoln Municipal Code be amended
2 to read as follows:

3 **8.32.150 Occupation Tax.**

4 ~~Prior to the issuance of a license to collect, haul, or convey refuse, as herein provided,~~
5 ~~the applicant for such license shall pay to the Health Director an annual occupation tax of~~
6 ~~\$100.00 on each refuse vehicle. Said occupation tax collected by the Health Director under~~
7 ~~this section shall be deposited with the City Treasurer who shall credit such money to the~~
8 ~~Health Department Fund.~~

9 (a) There is hereby imposed an occupation tax of \$7.00 on each ton of refuse
10 collected by a refuse hauler within the corporate limits of the City of Lincoln, and a tax of
11 \$7.00 on each ton of refuse collected by a refuse hauler outside the corporate limits of the City
12 of Lincoln and deposited in the public sanitary landfills as designated in Section 8.32.040 of
13 the Lincoln Municipal Code. The occupation taxes authorized herein shall be used exclusively
14 for funding solid waste management programs, including the payment of principal and interest
15 on revenue bonds issued by the City of Lincoln.

16 (b) Each refuse hauler shall, not later than 30 days from the last day of each
17 calendar quarter, remit to the City Treasurer payment of occupation taxes due and owing from
18 the previous calendar quarter, together with a complete and detailed statement of (1) the
19 tonnage of refuse collected within the corporate limits of the City of Lincoln, and (2) the
20 tonnage of refuse collected outside of the corporate limits of the City of Lincoln and deposited
21 in the public sanitary landfills during that period. The statement shall identify any tonnage
22 claimed to fall under an exemption to the occupation tax set forth in subparagraph (d) hereof.
23 Such statement shall be duly verified and sworn to by the officer or officers in charge of the
24 business. All such businesses shall at all reasonable times during business hours permit the

1 City, through its officers, agents, or representatives, to inspect the books and records of any
2 such business for the purpose of verifying such report or reports.

3 (c) All refuse collected by refuse haulers within the corporate limits, whether
4 destined for deposit in the public sanitary landfills as designated in Section 8.32.040 or for
5 deposit elsewhere, shall, before leaving the corporate limits of the City of Lincoln, be weighed
6 at the scales located at the public sanitary landfill at 56th Street and Bluff Road or at such other
7 scales approved by the Director of Public Works and Utilities. The refuse hauler shall, at that
8 time, advise the sanitary landfill operator or his designated representative of the amount of
9 such tonnage destined for deposit outside the State of Nebraska. Any refuse not being
10 deposited at the public sanitary landfills designated under Section 8.32.040, whether destined
11 for deposit inside or outside the State of Nebraska, shall be weighed and the driver of the
12 refuse vehicle shall be provided a certificate of weight which shall be displayed upon demand
13 to any police officer of the City of Lincoln.

14 (d) The occupation tax provided herein shall not be imposed upon (1) refuse
15 destined for deposit at any location outside the State of Nebraska, or (2) building rubbish or
16 demolition debris lawfully being deposited in the 48th Street public sanitary landfill.

17 Section 6. That Section 8.32.170 of the Lincoln Municipal Code be and the
18 same is hereby repealed:

19 **~~8.32.170 — Revocation and Suspension of License.~~**

20 ~~Any license issued hereunder to collect, haul, or convey refuse shall be subject to~~
21 ~~revocation or suspension by the Health Director for violation by the licensee of any provisions~~
22 ~~of this chapter or other ordinances of the city with respect to solid waste now in effect or~~
23 ~~hereafter enacted. Prior to such suspension or revocation, there shall be, in addition to the~~
24 ~~inspection by the environmental health sanitarian, an inspection by one or more of the~~
25 ~~following supervisory staff: supervisor of solid waste section, chief or assistant chief of the~~

1 ~~division of environmental health, or the health director, personally. Any action of suspension~~
2 ~~or revocation shall be personally reviewed and approved by the director. Notification of the~~
3 ~~order of suspension or revocation shall be made in writing and personally delivered or sent~~
4 ~~by certified mail, return receipt requested. Such order shall not become effective until the~~
5 ~~expiration of the time for appeal. Pending the determination of such appeal, the operation of~~
6 ~~any order of suspension or revocation shall be stayed.~~

7 ~~Any person aggrieved by the denial, suspension, or revocation of any permit provided~~
8 ~~for in this article may, within five days of the receipt of written notice of the entry of such~~
9 ~~order, appeal to the Lincoln-Lancaster County Board of Health.~~

10 Section 7. That Section 8.32.330 of the Lincoln Municipal Code be amended
11 to read as follows:

12 **8.32.330 ~~Suspension, Revocation or Reinstatement of Permits~~ Limited Landfill; Health**
13 **Hazard; Suspension of Permit.**

14 ~~The Health Director shall have the power to order the suspension or revocation of any~~
15 ~~permit to operate a limited landfill for a violation of the terms and provisions of this chapter.~~
16 ~~Notification of the order of suspension or revocation shall be made in writing and personally~~
17 ~~delivered or sent by registered or certified mail to the permittee. Such order shall not become~~
18 ~~effective until the expiration of the time for appeal. Pending the determination of such appeal,~~
19 ~~the operation of any order of suspension or revocation shall be stayed.~~

20 Notwithstanding the other provisions of this chapter, whenever the Health Director
21 finds unsanitary or other conditions in the operation of a limited landfill ~~fill~~ which, in the
22 director's judgment, constitutes a substantial hazard to the public health, the director may,
23 without prior warning, notice, or hearing, issue a written notice to the permittee or operator
24 citing such condition, specifying the corrective action to be taken, and specifying the time
25 period within which such action shall be taken; and, if deemed necessary, such order shall

1 state that the permit is immediately suspended ~~or revoked~~, and any fill operations are to be
2 immediately discontinued. Any person to whom such an order is issued shall comply
3 immediately therewith, but upon written request to the Health Director, shall be afforded a
4 hearing as soon as possible, before the Health Director. Such request must be made within
5 five days of receipt of notice. If the ~~revocation or~~ suspension is upheld, the aggrieved party
6 may appeal as hereinafter provided. ~~Any person whose permit has been suspended or~~
7 ~~revoked may, at any time, make application for reinspection for the purpose of reinstatement~~
8 ~~of the permit upon a form to be provided for that purpose and shall pay a reinspection fee in~~
9 ~~the sum of fifty dollars, which shall not be refundable. Within ten days following receipt of~~
10 ~~a written request, including a statement signed by the applicant that, in the applicant's~~
11 ~~opinion, the conditions causing suspension or revocation of the permit have been corrected,~~
12 ~~the Health Director shall make a reinspection. If the applicant has corrected conditions so as~~
13 ~~to comply with the requirements of this chapter, the permit shall be reinstated. Should such~~
14 ~~reinstatement be denied, the applicant may appeal as provided below.~~

15 Section 8. That Section 8.32.340 of the Lincoln Municipal Code be amended
16 to read as follows:

17 **8.32.340 Appeals.**

18 ~~Any person aggrieved by the denial, suspension or revocation of any permit to operate~~
19 ~~a limited landfill may, within five days of the receipt of written notice of the entry of such~~
20 ~~order, appeal to the Lincoln-Lancaster County Board of Health.~~

21 (a) Any application for the issuance of a license or permit under this chapter may
22 be denied by the Health Director if the application is incomplete, or if the required fees are
23 not tendered, or if the application does not comply with all requirements of this chapter and
24 other applicable laws. Any license or permit issued under this chapter shall be subject to
25 revocation or suspension by the Health Director for violation by the licensee or permittee of

1 any of the provisions of this chapter or other ordinances of the City with respect to solid waste
2 now in effect or hereinafter enacted, or for violation of any of the provisions or conditions of
3 the license or permit or for failure to pay any required fee or tax imposed by this chapter.
4 Notification of the order of suspension or revocation shall be made in writing and personally
5 delivered or sent by registered or certified mail to the permittee or licensee. Such order shall
6 not become effective until the expiration of the time for appeal. Pending the determination
7 of such appeal by the Health Director, the operation of any order of suspension or revocation
8 shall be stayed.

9 (b) The Health Director may suspend any license or permit for a specified period
10 of time not exceeding 90 days when a condition constituting a violation of the provisions of
11 this chapter exists for which a licensee or permittee must take corrective action. The order of
12 suspension shall specify the period of suspension and the corrective action to be taken by the
13 licensee or permittee and shall be served upon the licensee or permittee as provided in (a)
14 above. The Health Director may revoke the license or permit of any licensee or permittee
15 when such licensee or permittee has failed, after the period of suspension has expired, to take
16 the required corrective action, or in any case where, in the opinion of the Health Director,
17 revocation, and not suspension, is warranted in the first instance.

18 (c) Any person aggrieved by an order of suspension, revocation, or denial of any
19 permit or license issued under the provisions of this chapter may, within five days of the
20 receipt of written notice of the entry of such order, appeal to the Health Director for a hearing.
21 The Health Director shall notify the appellant in writing of the date, time, and place of hearing
22 before the Health Director, which date shall be no later than ten days from the filing of the
23 appeal. The appeal hearing shall not be conducted according to the technical rules relating
24 to evidence and witnesses, but the appellant shall have the right to:

- (1) Call and examine witnesses on any matter relevant to the issues of the hearing;
- (2) Introduce documentary and physical evidence;
- (3) Cross examine opposing witnesses on any matter relevant to the issues of the hearing; and
- (4) Rebut opposing evidence.

The Health Director shall review all information provided by the appellant. After the appeal hearing, the Health Director shall make written findings of fact and, based upon such findings, shall sustain, modify, or rescind the original order. A written report of the Health Director's decision shall be furnished to the appellant within ten days from the date that the appeal hearing is closed. The decision of the Health Director shall be final and binding upon the City and upon the appellant, and may be appealed as provided by state law but such decision shall not be stayed unless so ordered by the District Court..

Section 9. That Section 8.32.350 of the Lincoln Municipal Code be and the same is hereby repealed.

~~8.32.350 — Appeal Procedure.~~

~~—— (a) — All properly and timely filed appeals shall be referred to the Board of Health for hearing. The director shall notify the appellant in writing of the date, time, and place of hearing before the Board of Health, which date shall be no later than forty-five days from the filing of the appeal.~~

~~—— (b) — The Board of Health shall review the information provided by both the director and the appellant. Hearing on appeal need not be conducted according to the technical rules relating to evidence and witnesses. The appellant and the director shall have these rights, among others:~~

1 ~~_____ (1) To call and examine witnesses on any matter relevant to the issues of the~~
2 ~~hearing;~~

3 ~~_____ (2) To introduce documentary and physical evidence;~~

4 ~~_____ (3) To cross examine opposing witnesses on any matter relevant to the issues~~
5 ~~of the hearing; and~~

6 ~~_____ (4) To rebut the evidence against them.~~

7 ~~_____ (c) After each appeal hearing, the Board of Health shall make written findings of~~
8 ~~fact and based upon such findings shall sustain, modify or rescind the decision of the Health~~
9 ~~Director within thirty days of such hearing. A written report of the board's decision shall be~~
10 ~~furnished to the appellant within ten days from the date the appeal hearing is closed. The~~
11 ~~decision of the Board of Health shall be final and binding upon the city and upon the~~
12 ~~appellant, and its decision may be appealed as provided by law.~~

13 Section 10. That Sections 8.32.010, 8.32.060, 8.32.100, 8.32.110, 8.32.150,
14 8.32.330 and 8.32.340 of the Lincoln Municipal Code as hitherto existing be and the same
15 are hereby repealed.

16 Section 11. That Sections 1 through 10 of this ordinance shall be operative as
17 of June 1, 2003.

18 Section 12. That this ordinance shall take effect and be in force from and after
19 its passage and publication according to law.

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ____ day of _____, 2003:

Mayor